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10/069,632	02/26/2002	Robert Richard Dykstra	7753	3363

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EXAMINER

DELCOTTO, GREGORY R

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/069,632

Applicant(s)

DKYSTRA

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 13, 14, 17 and 20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, 16, 18, 19, 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

1. Claims 1-21 are pending.

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13 and 15-21, drawn to a bleaching composition comprising an organic catalyst, classified in class 510, subclass 311.
- II. Claim 14, drawn to a method for laundering fabrics, classified in class 8, subclass 137.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use.

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition of Group I can be used in a materially different process such as in a method of washing dishes.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: The instant claims are drawn to patentably distinct species of bleach catalysts formulas I-XX. However, note that, catalysts falling under formula XI and formula XII are species of catalysts having formula I and formula II, respectively, and will be included together as the elected species if either one of each group is elected.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Specifically, Applicant is required to elect one of the formulas falling with formula(s) I-XX. Currently, claims 1-21 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Jim McBride on March 19, 2004, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-13 and 15-21 and compounds falling under Formula I, and hence Formula XI (species of Formula I), as the elected species. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13, 14, 17, and 20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

#### ***Priority***

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

Applicant has not claimed priority under 35 USC 119(e) in the first sentence of the specification. Accordingly, priority has not been granted.

#### ***Specification***

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 7 recite the limitation "said peroxygen source" in lines 2 and 1, respectively. There is insufficient antecedent basis for this limitation in the claim.

Note that, for purposes of examination, the Examiner has interpreted claim 1 to include the limitation "with or without a peroxygen source". Clarification is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

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directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 5, 6, 10, 15, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Madison et al (US 5,482,515).

Madison et al teach novel bleach catalysts, a method for bleaching substrates using these catalysts and detergent compositions containing the catalysts. The catalysts are quaternary imine salts. Substrates such as fabrics may be bleached in an aqueous solution containing these salts and a peroxygen compound. See Abstract. Madison et al teach a bleaching composition containing from 1 to about 60% by weight of a peroxygen compound, from about 0.01 to 10% by weight of an oxygen transfer agent having the same structure as the catalyst recited by the instant claims, and from 0.5% to 50% of a surfactant. See column 2, lines 25-65. Suitable surfactants include anionic, nonionic, amphoteric, zwitterionic, etc. Suitable anionic surfactants include sodium and ammonium alkyl sulfates, sodium and ammonium alkyl benzene sulfonates, etc. See column 7, lines 35-65. The compositions may also contain a detergent builder such as sodium or potassium tripolyphosphate, nitrilotriacetic acid, polyacrylic acid, etc. The compositions may also contain lather boosters such as monoethanolamides derived from palm kernel fatty acids, lather depressants such as alkyl phosphates and silicones, fabric softening agents, etc.

Specifically, Madison et al teach a detergent composition containing peroxide, 15% anionic, 8% nonionic, 30% zeolite, and 20% carbonate, an imine quat salt concentration, etc. Note that, the Examiner asserts that the organic catalysts as specifically taught by Madison et al would inherently have the same catalyst lifetime as recited by the instant claims because the catalysts taught by Madison et al are the same



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as those recited by Formula I as recited by the instant claims. Accordingly, the broad teaching of Madison et al anticipate the material limitations of the instant claims.

Claims 2-4, 7-9, and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Madison et al (US 5,482,515).

Madison et al are relied upon as set forth above. Note that, the Examiner asserts that the organic catalysts as specifically taught by Madison et al would inherently have the same catalyst lifetime as recited by the instant claims because the catalysts taught by Madison et al are the same as those recited by the instant claims. Accordingly, the broad teaching of Madison et al anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of Madison et al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed organic catalyst and source of hydrogen peroxide in order to provide the optimum cleaning properties to the composition since Madison et al teach that the type of organic catalyst and peroxygen source added to the composition may be varied.

Claims 11, 12, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madison et al (US 5,482,515).

Madison et al are relied upon as set forth above. However, Madison et al do not teach a composition containing the specific bleach catalysts in combination with the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of skill in the art, at the time the invention was made, to formulate a composition containing the specific bleach catalysts in combination with the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teaching of Madison et al suggest a composition containing the specific bleach catalysts in combination with the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1, 5-7, 10, 15, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 95/13353.

'353 teaches a bleaching composition that includes a peroxygen compound such as sodium perborate, an oxygen transfer agent in the form of a quaternary imine salt and a bleach precursor. See Abstract. Note that, '353 teaches oxygen transfer agents having the same general formula as recited by the instant claims. See page 3, line 10 to page 4, line 20. Preferred bleach precursors include TAED, etc. See page 14, lines 1-40. Additionally, the compositions also may contain a surfactant such as anionic, nonionic, amphoteric, or zwitterionic surfactant. Suitable anionic surfactants include alkyl sulfates, alkyl benzene sulfonates, etc. See page 16, lines 10-38. Additionally, the compositions will also contain a detergency builder such as sodium or potassium tripolyphosphate, nitrilotriacetic acid, oxydisuccinate, etc. Additionally, enzymes such as proteases, cellulases, lipases and amylases may be added to the compositions. See page 9, lines 10-30.

Specifically, '353 teaches a bleaching composition containing peroxide which is mixture of TAED/perborate, 15% anionic surfactant, 8% nonionic surfactant, 30% zeolite, 20% carbonate, etc. Note that, the Examiner asserts that the organic catalysts as specifically taught by '353 would inherently have the same catalyst lifetime as recited by the instant claims because the catalysts taught by '353 are the same as those recited by Formula I as recited by the instant claims. Accordingly, the broad teachings of '353 anticipate the material limitations of the instant claims.

Claims 2-4, 8, 9, and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 95/13353.

'353 are relied upon as set forth above. Note that, the Examiner asserts that the organic catalysts as specifically taught by Madison et al would inherently have the same catalyst lifetime as recited by the instant claims because the catalysts taught by Madison et al are the same as those recited by the instant claims. Accordingly, the broad teaching of '353 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '353 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed organic catalyst and peroxygen source in order to provide the optimum cleaning properties to the composition since '353 teaches that the type of organic catalyst and peroxygen source added to the composition may be varied.

Claims 11, 12, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/13353

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'353 are relied upon as set forth above. However, '353 does not teach a composition containing the specific bleach catalysts in combination with the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of skill in the art, at the time the invention was made, to formulate a composition containing the specific bleach catalysts in combination with the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of '353 suggest a composition containing the specific bleach catalysts in combination with the other requisite components of the composition in the specific proportions as recited by the instant claims.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to

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identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Claims 1-12, 15, 16, 8, 19, and 21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-15 of copending Application No. 10/069630, claims 1-26 of 10/069634, claims 1-20, 25, 27-34, and 37-44 of 10/069631, claims 1-20, 25, 27-34, and 37-44 of 10/083948, and claims 1-16 and 20-25 of 10/069629. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 5-15 of copending Application No. 10/069630, claims 1-26 of 10/069634, claims 1-20, 25, 27-34, and 37-44 of 10/069631, 1-20, 25, 27-34, and 37-44 of 10/083948, and claims 1-16 and 20-25 of 10/069629 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### **Conclusion**

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571)

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272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gregory R. Del Cotto  
Primary Examiner  
Art Unit 1751

GRD  
March 22, 2004